IN THE

Supreme Court of the United States

October Term, 1939

No.....

WILLIAM DOSTER NOLAND,

Petitioner,

vs.

VYOLA BUBB NOLAND, also known as Vyola Bubb Loughman, and WILFRED L. FARRAR,

Respondents.

BRIEF IN SUPPORT OF PETITION.

I.

Opinion of the Court Below.

The opinion of the Circuit Court of Appeals is printed in the record at pages 122 to 128, inclusive, and for brevity is not repeated here.

Jurisdiction.

The judgment of the Circuit Court of Appeals was rendered on April 26, 1940 [R. 129].

The Supreme Court of the United States have jurisdiction under Title 28, Judicial Code and Judiciary, Section 347, subd. (a), (Section 240, Judicial Code, amended), Code of Laws of the United States of America, 1934 Edition.

Statement.

A complete statement of the matter and procedure appears in the petition hereof, in which several federal questions are involved; more particularly the questions of full faith and credit, and contract rights as provided under the Constitution of the United States, and also fraud as shown in the record, and for brevity the statement is not repeated here.

Specifications of Error.

I.

The Circuit Court of Appeals erred, by its decree of April 26, 1940, in affirming the judgment of the District Court below entered September 23, 1939, denying leave to amend.

II.

The Circuit Court of Appeals erred, by its decree of April 26, 1940, affirming the judgment of the District Court below entered September 23, 1939, by affirming

with costs in favor of the appellees and against the appellant, when the judgment of the District Court below reads, "No costs allowed under Rule 54D."

III.

The Circuit Court of Appeals erred, by its decree of April 26, 1940, in affirming the judgment of the District Court below, entered September 23, 1939; impairing the obligations of contract made and entered into by petitioner and respondent Vyola Bubb Noland, as shown in the record hereof.

IV.

The Circuit Court of Appeals erred, by its decree of April 26, 1940, in affirming the judgment of the District Court below made and entered September 23, 1939, in denying the full faith and credit provision of the Constitution of the United States.

V.

The Circuit Court of Appeals erred, by its decree of April 26, 1940, in affirming the judgment of the District Court below made and entered September 23, 1939, by rendering a law decree in a proceeding in equity.

ARGUMENT.

I.

Rights and Obligations of Contract Impaired Against Petitioner.

The petitioner William Doster Noland and respondent Vyola Bubb Noland, also known as Vyola Bubb Loughman, made and entered into a contract, for property settlement, on the 13th day of December, 1934, at Las Vegas, Nevada, two days prior to a Nevada decree of divorce, by which the property and property rights existing between the said parties were fully settled for all time to come, as shown in the record, and regardless of this contract, and disregarding same, the said respondent, Vyola Bubb Noland, filed a complaint in the Superior Court of the State of California, in and for Ventura County, seeking judgments on her property and property rights in violation of her obligations of the said contract, and fraudulently procured judgment for $1000.00 as attorney's fees and $50.00 as court costs, when the said contract for property settlement between the said parties hereof, prohibited said respondent from conducting any such procedure and obtaining such judgments, and impairing the said contract, and the District Court below sustained the said impairing of the obligations of said contract, and the Circuit Court of Appeals affirmed the impairing of the obligations of said contract as sustained by the said District Court below, all of which procedure has violated and impaired the obligations of said contract unlawfully against your petitioner hereof, and the Constitution of the United states provides:

> "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, . . ."
>
> *Constitution of United States,* Article I, Sec. 10.

And the aforesaid contract between the petitioner and aforesaid respondent, is a contract which relates to property and property rights, of the parties, and the contracts which the Constitution of the United States protects are those which relate to property and property rights:

Douglas v. Kentucky, 168 U. S. 488 (1897),

and in the impairment of contract obligations, it is not a question of degree; the obligation must not be impaired or diminished at all:

Planters' Bank v. Sharp, 6 How. 301 (1848),

and in the rulings and decisions of all the courts which have had this matter before them, namely, the State Courts of California, the District Court of the United States and the Circuit Court of Appeals of the United States, it is set forth in the record, that the state's laws and rulings have been upheld, and thereby we have the impairment of the obligations of the aforesaid contract between the petitioner and aforesaid respondent Vyola Bubb Noland, and when the jurisdiction of the United States Supreme Court is invoked because of the asserted impairment of contract rights arising from the effect of said state laws and rulings, it is the duty of the Court to exercise independent judgment as to the nature and scope of the contract:

Board of Liquidation v. Louisiana, 179 U. S. 622 (1901).

The Supreme Court can examine the alleged contract to determine the obligations which inhere in it:

Schenebeck v. McCrary et al., 298 U. S. 36 (1936),

and the Supreme Court will determine for itself the meaning and effect of the contract:

Violet Trapping Co. v. Grace, 297 U. S. 119 (1936),

and whether the obligation has been impaired:

Ingraham v. Hanson, 297 U. S. 378 (1936).

II.

The Rights of Full Faith and Credit as Provided by the Constitution of the United States Are Denied to Petitioner.

The respondent Vyola Bubb Noland procured a decree of divorce from the Eighth Judicial District Court of the State of Nevada, in the County of Clark, and the foregoing contract conditions were provided in said decree, but the said respondent refused to comply with the said Nevada decree of her own making and liking; the petitioner then applied to the Superior Court of the State of California, in and for the County of Ventura, to compel said respondent to comply with said Nevada decree, and the said California Court entirely disregarded the aforesaid contract between petitioner and respondent, and judgment of the said Nevada Court, and thereupon your petitioner applied to the said Nevada Court for an amended decree of divorce, which was granted by the said Nevada Court, as shown in the record, and again the said amended decree of Nevada Court was enjoined by the said Superior Court of California; the said Nevada Court making and entering the amended decree on December 23, 1937, and the said Superior Court of California, on December 27, 1937, made and entered a temporary restraining order without notice and without any return date and served same, and said order is still in effect and has been at all times, preventing the enforcing of the said amended decree of divorce rendered by the said Nevada Court, and thereby in the California State Courts, District Court of the United States, and the Circuit Court of Appeals

of the United States, Ninth Circuit, your petitioner has been and is now denied his contract rights and the full faith and credit of the amended decree of divorce as rendered by the said District Court of the State of Nevada, disregarding the fact that the Constitution of the United States provides as follows:

> "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."
>
> *Constitution of United States*, Article IV, Sec. 1.

By the act of March 27, 1804 (2 Stat. 298), Congress extended the rights under this clause to the public acts, records, judicial proceedings, etc., of the Territories of the United States and countries subject to the jurisdiction thereof:

> *Atchison, T. & S. F. R. Co. v. Sowers*, 213 U. S. 55 (1909).

And the Courts of the United States are bound to give to the judgments of the state Courts the same faith and credit that the Courts of one state are bound to give to the judgments of the Courts of her sister states:

> *American Surety Co. v. Baldwin*, 287 U. S. 156 (1932),

and the United States Supreme Court has held; under the full faith and credit clause it declares the attributes and qualities which judicial proceedings and records of one

state shall have when offered in evidence in the Courts of another, and it implies that they shall be given the same effect in the Courts of another state as they have by the laws and usage at home:

Chicago & A. R. Co. v. Wiggins Ferry Co., 119 U. S. 615, 622 (1887),

and no greater effect can be given than is given in the state where rendered:

Robertson v. Pickrell, 109 U. S. 608, 610 (1883),

and the extent of conclusiveness is that when duly pleaded and proved, judgments of other states have the effect of being not merely *prima facie* evidence but conclusive proof of the rights thereby adjudicated:

Everett v. Everett, 215 U. S. 203 (1909),

and whoever by virtue of public position under a state government deprives another of rights granted under the Constitution, violates the constitutional inhibition:

Georgia Power Co. v. Decatur, 281 U. S. 505, 508 (1930);

Constitution of United States, Article XIV, Sec. 1.

And the prohibitions of the Fourteenth Amendment of the Constitution of the United States provides that whoever by virtue of a public position deprives another of property, life, or liberty, without due process of law, or denies or takes away equal protection of the laws, violates the constitutional inhibition; and as he acts in the name of the state, and for the state, and is clothed with state's power, his act is that of the state:

Missouri v. Dockery, 191 U. S. 165.

III.

Petitioner Is Denied the Rights of a Ruling in Equity In An Equity Procedure.

The record shows that the petitioner proceeded in an equity proceeding in a court of equity, in the United States Courts, and that the decree was based upon law decrees of states, regardless of the fact that the jurisdiction and procedure in equity cases in United States Courts is uniform throughout the whole country regardless of where the Court of Equity may be sitting:

> *Venner v. Great Northern R. Co.*, 153 Fed. 408 (affirmed 209 U. S. 24, 28 Sup. Ct. 328, 52 L. Ed. 666,

and a Court of Equity of the United States Courts is entirely independent of and cannot be affected by state legislation abolishing the distinction between actions at law and suits in equity:

> *Hollins v. Brierfield Coal, etc. Co.*, 150 U. S. 371, 14 Sup. Ct. 127, 37 L. Ed. 1113,

and the jurisdiction of Federal Courts in Equity cannot be defeated or impaired by state statutes undertaking to give exclusive jurisdiction to state Courts:

> *Hayes v. Pratt*, 147 U. S. 557,

and Courts of Equity may apply their own rule in all equity cases:

> *Kirby v. L. S. & M. S. Ry. Co.*, 120 U. S. 130, 7 Sup. Ct. 430, 30 L. Ed. 569,

and a Court of Equity concerns itself only in the protection of property rights and treats any civil right of a pecuniary nature as a property right:

In re Sawyer, 124 U. S. 200, 210, 8 Sup. Ct. 482, 31 L. Ed. 402,

and the equity jurisdiction of federal Courts is independent of that conferred upon state Courts, and is not subject to the rulings of state Courts and state legislatures:

Kendall v. Creighton, 23 Howard (U. S.) 90, 106, 16 L. Ed. 419;

Borer v. Chapman, 119 U. S. 587, 7 Sup. Ct. 342, 30 L. Ed. 532,

and federal Courts of Equity are not subject to interference by state Courts, or state legislation:

McCulloch v. Maryland, 4 Wheat. (U. S.) 316, 405, 424 U. S. Rep. 17.

IV.

Petitioner Is Denied Leave to Amend and Due Process of Law.

The record shows in the decree of the District Court below and the Circuit Court of Appeals, that your petitioner was denied leave to amend and denied thereby due process of law.

As it has been held that it is reversible error to dismiss a bill in equity without leave to amend; and is a denial of due process:

> *Rogers v. Penobscot Mix. Co.*, 154 Fed. 606, 83 C. C. A. 380;
>
> *Kendig v. Deane*, 97 U. S. 423,

and in a proceeding in equity, in the case of

> *United States v. Lehigh Valley R. R. Co.*, 220 U. S. 287,

the United States proceeded, both by equity and mandamus, against certain railroad companies, and Mr. Chief Justice White delivered the opinion, saying:

> "Deciding as we do, that error was committed in denying leave to file proposed amended bill, the decree below is reversed and the cause remanded with directions for further proceedings in conformity with this opinion."

V.

Petitioner Is Subjected and Decreed to Pay Costs Unlawfully.

The Circuit Court of Appeals erred, and decreed, by affirming costs against your petitioner in the District Court below, when the said District Court ruled "No costs allowed under *Rule 54D,*" and the Supreme Court may notice errors on appeal, though no assignment of errors filed:

Benjamin v. Buell, 268 Fed. 792,

and no administrative or judicial action may do what the laws of the United States forbid:

Penn. R. Co. v. Pol. Ser. Com., 250 U. S. 566,

and since the judgment originally obtained in the State of California was obtained fraudulently upon false testimony and likewise in the District Court below, and affirmed by the Circuit Court of Appeals, it is well established that such fraud is sufficient to undermine such judgments, and such judgments have been enjoined and set aside in the Federal Courts:

Chicago, Rock Island & Pacific Ry. Co. v. Calicotte (C. C. A. 8), 267 Fed. 799, 16 A. L. R. 386.

VI.

Petitioner Is Entitled to Justice in Equity.

Petitioner for the purpose of obtaining relief against fraud must resort to a court of equity:

Burnes v. Scott, 117 U. S. 582, 6 Sup. Ct. 865, 29 L. Ed. 991,

and it is the privilege and duty of a court of equity to furnish the remedy:

Morgan v. Beloit, 7 Wall. 614,

and whenever the property of a party has been wrongfully misapplied, it is a ground upon which a court of equity will act:

Nat. Bank v. Insurance Co., 104 U. S. 54,

and equity will apply the maxim in order to defeat what would otherwise operate as fraud:

Williamson v. Krohn, 66 Fed. 655, 13 C. C. A. 668,

and by application of the maxim, no matter what formal and proper proceedings surround a fraud, equity will disregard them all, if necessary, in order that justice may prevail:

Wagg v. Herbert, 215 U. S. 546, 30 Sup. Ct. 218, 54 L. Ed. 321,

and courts of equity will not only interfere in cases of fraud to set aside acts done, but they will also, if acts have

by fraud been prevented from being done by the parties, interfere and treat the case exactly as if the acts had been done:

Moore v. Crawford, 130 U. S. 122, 128, 9 Sup. Ct. 447, 32 L. Ed. 878, 880;

1 *Story Eq. Jur.,* Sec. 187,

and courts of equity have jurisdiction to relieve in all cases of fraud:

Whitcomb v. Schultz, 223 Fed. 268, 138 C. C. A. 510,

and a court of equity will grant relief in equity upon the ground of fraud:

Folsom v. Ballard, 70 Fed. 12, 16 C. C. A. 593.

Conclusion.

For the foregoing reasons as set forth in the record, petition and supporting brief, it is respectfully submitted that the writ of certiorari should issue in the above entitled matter as prayed.

Respectfully submitted,

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